

John Dixon appeals the trial court's revocation of his probation. On appeal, Dixon raises the following two issues:

- I. Whether there was sufficient evidence to support the revocation; and
- II. Whether the trial court erred when it failed to credit Dixon with the time he spent incarcerated between his arrest and the trial court's determination that he violated his probation.

We affirm and remand with instructions.

FACTS AND PROCEDURAL HISTORY

On February 22, 2008, Dixon entered into a plea agreement whereby he pleaded guilty to one count of strangulation¹ and one count of criminal confinement,² both class D felonies. The court sentenced Dixon to 545 days for the strangulation conviction, with the executed portion limited to the time served and the remaining 383 days suspended to probation, and to a consecutive 545 days, all suspended, for the criminal confinement conviction. The court also placed Dixon under a no contact order as to the victim, T.L.

On March 31, 2008, a notice of probation violation was filed against Dixon. The notice alleged that Dixon had violated the no contact order by calling T.L. at her work and following her, and that he had spray-painted the internet address of a website containing lewd photos of T.L. on T.L.'s apartment wall. The notice also alleged that a bullet had been left on T.L.'s doorstep. Dixon was taken into custody on April 3, 2008.

¹ See Ind. Code § 35-42-2-9.

² See Ind. Code § 35-42-3-3.

On April 23, 2008, a hearing was held on the probation violation. At the hearing, T.L. testified that Dixon called her at her place of employment on March 3, 2008 and said, “This is not over. I’m going to get you.” *Tr.* at 24. Although the call was placed from a private number, T.L. stated that she recognized Dixon’s voice. T.L. also stated that she saw Dixon driving up and down the street where she worked and that he had followed her on her way to school. T.L. also testified that her cell phone, which had contained nude photos of her, had been stolen prior to February 22, 2008. T.L. stated that calls were made from the stolen cell phone and that these photos were sent to her contacts through the phone. T.L. testified that a bullet had been left on her doorstep and the words “ho” and “Muslim ho” had been written on the outside of her apartment, as well as a website address. *Tr.* at 28. The website contained the nude photos from the cell phone, and T.L. testified that one of the photos depicted T.L. and Dixon together. The website also contained T.L.’s personal information, including her work phone number, her sister’s phone number, her date of birth, and information about her husband and brother-in-law. T.L. testified that Dixon was the only person who knew some of this information and that she had seen Dixon create similar websites in the past.

At the conclusion of the hearing, the court found that Dixon had violated his probation and ordered him to serve his remaining 928-day sentence. Dixon now appeals.

DISCUSSION AND DECISION

I. Sufficiency of Evidence

“Probation is conditional liberty that is a privilege, not a right.” *Hubbard v. State*, 683 N.E.2d 618, 620 (Ind. Ct. App. 1997). At a probation revocation hearing, the sole question is “whether the probationer should be allowed to remain conditionally free, given the evidence of repeated antisocial behavior, or rather should be required to serve the previously imposed sentence in prison.” *Morgan v. State*, 691 N.E.2d 466, 468 (Ind. Ct. App. 1998). A revocation hearing is in the nature of a civil proceeding, and the alleged violation only needs to be proven by a preponderance of the evidence. *Id.* We review a trial court’s decision to revoke probation for an abuse of discretion. *Marsh v. State*, 818 N.E.2d 143, 144 (Ind. Ct. App. 2004).

Dixon contends that the evidence presented at the revocation hearing was insufficient to support the trial court’s order of revocation. We disagree. When reviewing the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. *Smith v. State*, 727 N.E.2d 763, 765 (Ind. Ct. App. 2000). We will affirm revocation if, considering only the probative evidence and reasonable inferences therefrom, there is sufficient evidence supporting the conclusion that the probationer has violated a condition of his probation. *Hubbard*, 683 N.E.2d at 620.

T.L. testified that Dixon made a threatening phone call to her at her place of work on March 3, 2008. Dixon argues that this was not sufficient evidence to support revocation because the telephone records were not subpoenaed and because T.L. is not credible.

However, we must decline Dixon's invitation to reweigh the evidence and judge the credibility of witnesses. T.L.'s testimony regarding the phone call was sufficient evidence to support the trial court's finding that Dixon violated the no contact order. *See Morgan*, 691 N.E.2d at 469.

Dixon further argues that there was insufficient evidence to connect him to the website and that, even if Dixon had created the website, there is no evidence that it was intended to be a direct or indirect communication to T.L. We need not address these contentions because violation of a single condition of probation is sufficient to revoke probation. *Hubbard*, 683 N.E.2d at 622. Therefore, T.L.'s testimony regarding the phone call alone was sufficient evidence to support the trial court's decision to revoke Dixon's probation. Therefore, we conclude that trial court did not abuse its discretion.

II. Credit for Time Spent Incarcerated Prior to Hearing

Dixon contends that the trial court erred when it failed to credit toward his sentence the time he spent incarcerated between his arrest, on April 3, 2008, and the trial court's revocation of his probation, on April 23, 2008. A person imprisoned for a crime or confined awaiting trial or sentencing earns one day credit time for each day he is imprisoned for a crime or confined awaiting trial or sentencing. Ind. Code § 35-50-6-3; *Stephens v. State*, 735 N.E.2d 278, 284 (Ind. Ct. App. 2000), *trans. denied*. "Determination of a defendant's pretrial credit is dependent upon (1) pretrial confinement, and (2) the pretrial confinement being a result of the criminal charge for which sentence is being imposed." *Stephens*, 735 N.E.2d at 284.

In the present case, the trial court did not address the subject of jail credit time, and the record does not reflect whether Dixon was being held on any other criminal charges while his probation revocation hearing was pending. Consequently, we remand this cause to the trial court to determine whether Dixon is entitled to jail credit time.

Affirmed and remanded with instructions.

BAKER, C.J., and NAJAM, J., concur.